

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GEICO Choice Insurance Company,

Case No.: 2:20-cv-01746-JAD-VCF

Plaintiff

Henry Biderman, Aparicio, et al

Defendants

Order Granting Defendants' Motion to Dismiss for Want of Subject-Matter Jurisdiction and Closing Case

[ECF Nos. 26, 28]

This suit arises from a tragic car accident that killed Damaso and Christa Puente. The Puentes' heirs filed a wrongful-death suit in Nevada state court against the tortfeasor driver and others, and GEICO Choice Insurance Company is defending the driver in that action on a reservation of rights. Because GEICO contends that its policy does not provide coverage for the Puente-heirs' claims, it filed this federal suit seeking a declaration that it does not owe a duty to defend or indemnify in the state-court action. The Puentes' heirs move to dismiss this federal action, arguing that the amount-in-controversy threshold is not met, that there is no case or controversy, and alternatively that this court should exercise its discretion not to hear this declaratory-judgment claim. GEICO opposes that motion and moves for summary judgment in its favor. Because I find that GEICO has failed to establish that the amount-in-controversy requirement for diversity jurisdiction is satisfied, I grant the motion to dismiss on that basis, do not reach the heirs' remaining arguments, and deny as moot GEICO's motion for summary judgment.

Discussion

22 The Puentes were killed when their car was struck by a Mercedes-Benz driven by Henry
23 Biderman Aparicio. At the time of the crash, Aparicio had a GEICO car-insurance policy for a

1 Lexus; the Mercedes-Benz was the subject of a different Esurance policy held by Morgan
 2 Hurley, who lived with Aparicio and was a passenger in the car on that fateful night.¹ The
 3 Puentes had no children, and their separate heirs and estates—six claimants in total²—filed a
 4 wrongful-death suit against Aparicio, Hurley, and others in Nevada state court.³ GEICO
 5 disputes coverage, taking the position that the Mercedes-Benz was not covered by its policy, so it
 6 has no duty to defend or indemnify Aparicio or Hurley in the Puente-heirs' suit.⁴ GEICO filed
 7 this federal action under the Declaratory Judgment Act (DJA), 28 U.S.C. § 2201, against the
 8 Puente heirs, Aparicio, Hurley, and all other defendants in the state-court case,⁵ seeking a no-
 9 coverage declaration so it can step away from the state-court matter.

10 The DJA does not itself confer federal jurisdiction, so an independent jurisdictional basis
 11 is needed to keep this suit in federal court.⁶ GEICO seeks to invoke this court's jurisdiction
 12 based on 28 U.S.C. § 1332(a), which confers subject-matter jurisdiction if “there is complete
 13 diversity of citizenship among the parties and the amount in controversy exceeds \$75,000,
 14 exclusive of interest and costs.”⁷ Because GEICO filed this action here originally, it “bears the
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16¹ ECF No. 29 at 57 (GEICO policy documents), 92 (declaration of Christopher Wilband) at ¶ 15.

17² Damaso S. Puente sues individually and on behalf of the Estate of his son, Damaso I. Puente;
 18 Maria Puente, Daniel Malone, and Diane Malone sue individually and on behalf of Christa's
 estate. See ECF No. 29 (state-court complaint) at 110, ¶¶ 5–8.

19³ ECF No. 29 at 109.

20⁴ ECF No. 1 (complaint).

21⁵ *Id.* The defendants also include Dave & Buster's (where Aparicio and Hurley allegedly
 consumed alcohol before the accident) and Mat-Summerlin, LLC d/b/a Casa del Matador
 Summerlin and Mocore, LLC (where Aparicio allegedly worked and where he and Hurley
 consumed alcohol before the accident). *Id.* at ¶¶ 2–3, 8–10, 13; ECF No. 28 at 80–81. Both
 have filed notices of disclaimer of interest in the policy and acceptance of any non-monetary
 judgment. See ECF Nos. 19, 20. Aparicio has not appeared and was defaulted. ECF No. 25.

22⁶ *Nationwide Mut. Ins. Co. v. Liberatore*, 408 F.3d 1158, 1161 (9th Cir. 2005).

23⁷ *Crum v. Circus Enters.*, 231 F.3d 1129, 1131 (9th Cir. 2000) (citing 28 U.S.C. § 1332(a)).

1 burden of establishing that jurisdiction exists,”⁸ and this court must presume a lack of subject-
 2 matter jurisdiction until that burden is met.⁹ It is undisputed that the parties in this action are
 3 completely diverse. The sole jurisdictional question here is whether the amount in controversy
 4 exceeds \$75,000.

5 The answer to that question depends on the value of GEICO’s claims against any
 6 defendant here. The GEICO policy has a per-person limit of \$50,000 and a per-occurrence limit
 7 of \$100,000.¹⁰ The insurer argues that the \$100,000 per-occurrence limit is the one that controls,
 8 theorizing that “it seems any reasonable person would agree that the amount in controversy is
 9 over \$75,000 by dint of the alleged policy at issue contains [sic] per occurrence limits of
 10 \$100,000.00—that is, all 6 claimants combined would take \$100,000.00, combined, if coverage
 11 exists and their claims proven.”¹¹ The heir-defendants counter that it is not possible for their
 12 “six plaintiffs’ claims, each worth less than \$50,000, [to] be aggregate[d] to reach the federal
 13 diversity jurisdictional limit of \$75,000.00.”¹²

14 **A. A case must be dismissed when it appears to a legal certainty that the claim is
 15 for less than \$75,000.**

16 The amount in controversy is normally determined from the face of the pleadings,”¹³
 17 which “controls so long as the claim is made in good faith.”¹⁴ To dismiss based on an
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19 ⁸ *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986).

20 ⁹ *Kokonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994) (citation omitted).

21 ¹⁰ ECF No. 29 at 57.

22 ¹¹ *Id.* at 9–10 (emphasis omitted).

23 ¹² ECF No. 26 at 4.

24 ¹³ *Pachinger v. MGM Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir. 1986).

25 ¹⁴ *Crum*, 231 F.3d at 1131 (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938)).

1 insufficient amount in controversy, “[i]t must appear to a legal certainty that the claim is really
 2 for less than the jurisdictional amount.”¹⁵ This legal certainty standard is clearly met in limited
 3 situations, including “when a specific rule of law or measure of damages limits the amount of
 4 damages recoverable.”¹⁶ In such cases, courts “may go beyond the pleadings for the limited
 5 purpose of determining the applicability of the rule or measure of damages.”¹⁷

6 **B. No claim against any defendant in this action meets the jurisdictional threshold.**

7 It appears to a legal certainty that GEICO cannot establish that any claim has a value that
 8 exceeds \$75,000 in this case. As a foundational matter, when a plaintiff asserts a single claim
 9 against multiple defendants, as GEICO does in this declaratory-relief action, the claims against
 10 those various defendants cannot be added together to reach the jurisdictional threshold; the
 11 amount in controversy for each defendant must independently satisfy it.¹⁸ And here, GEICO’s
 12 claim against no Puente heir can exceed the \$50,000 per-person limit in Aparicio’s policy.

13 When the issue in a declaratory-relief coverage case is “the applicability of [a party’s]
 14 liability coverage to a particular occurrence,” as it is here, “the amount in controversy is the
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 17 ¹⁵ *Red Cab Co.*, 303 U.S. at 289.

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 19 ¹⁶ 14A Wright, Miller, and Cooper, Federal Practice and Procedure, Jurisdiction, § 3702 at 48–50
 20 (2d ed. 1985).

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 22 ¹⁷ *Pachinger*, 802 F.2d at 364.

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 24 ¹⁸ *Exxon Mobile Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 585–86 (2005) (citation omitted)
 25 (noting that the Supreme Court “has long held that, in determining whether the amount-in-
 26 controversy requirement has been satisfied, a single plaintiff may aggregate two or more claims
 27 against a single defendant, even if the claims are unrelated. But in multiparty cases,” the court
 28 has “unyieldingly adhered to the nonaggregation rule”); *accord Libby, McNeill, & Libby v. City*
Nat. Bank, 592 F.2d 504, 510 (9th Cir. 1978) (quoting *United States v. S. Pac. Transp. Co.*, 543
 29 F.2d 676, 683 n.9 (9th Cir. 1976)) (“As we have stated, the tests for aggregating claims of one
 30 plaintiff against multiple defendants and of multiple plaintiffs against one defendant are
 31 “essentially the same . . . : the plaintiff’s claims against the defendants must be common and
 32 undivided so that the defendants’ liability is joint and not several.”).

1 value of the underlying potential tort action.”¹⁹ An insurer’s maximum liability under an
 2 insurance policy “is relevant to determining the amount in controversy only if the validity of the
 3 entire insurance policy is at issue, or if the value of the underlying tort claims exceeds the
 4 liability ceiling.”²⁰ The latter is true here, as GEICO concedes that the value of the heirs’
 5 underlying tort claims in the double-fatality, wrongful-death suit easily exceeds the policy’s
 6 liability ceiling of \$100,000.²¹ So the amount in controversy for GEICO’s claims in this
 7 coverage case is tied to policy limits.

8 With no citation to case law or Aparicio’s policy, GEICO asserts that the \$100,000 per-
 9 occurrence limit applies and briefly argues that it could also seek punitive damages to meet the
 10 jurisdictional threshold.²² GEICO’s theory hinges on the idea that the Puente heirs could receive
 11 up to \$100,000 total. To reach that value, GEICO aggregates the six heir-defendants’ potential
 12 state-court recoveries.

13 But it’s not the \$100,000 per-occurrence limit that controls the jurisdictional analysis
 14 here—it’s the per-person limit of \$50,000 because Nevada law,²³ which GEICO concedes
 15 applies in this diversity action,²⁴ confines the Puente-heirs’ recovery to a portion of the per-
 16 person policy limit for their respective decedent. In *Nationwide Mutual Insurance Co. v. Moya*,
 17 the Nevada Supreme Court explained “that damages for loss of consortium or wrongful death—

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 19¹⁹ *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471, 1473 (9th Cir. 1997) (citation
 20 omitted).

²⁰ *Id.*

²¹ See ECF No. 29 at 26 (“Quite frankly, for moving defendants to maintain each of their six (6)
 22 defendants[’] claims are valued at less than \$50,000 each is unbelievable.”).

²² *Id.* at 25.

²³ See *Nationwide Mut. Ins. Co. v. Moya*, 837 P.2d 426, 430 (Nev. 1992).

²⁴ ECF No. 29 at 17–18.

1 resulting from ‘bodily injury’ to one person—are subject to the ‘each person’ limit.”²⁵ So when
 2 “one person is injured in the accident, the each[-]person limit applies, regardless of the number
 3 of persons damaged as a result of the accident.”²⁶ It reasoned that the numerous heirs “did not
 4 suffer bodily injuries *in the accident*” and that “their claims arose *as a result* of the injuries [the
 5 decedent] suffered *in the accident* (which eventually caused her death).”²⁷ The court relied on
 6 “common sense,” noting that an heir would not have a wrongful-death claim “but for the injuries
 7 sustained” by the decedent.²⁸ Thus, under Nevada law, regardless of the number of heirs that a
 8 decedent has, those heirs are collectively entitled only to the per-person policy limit for the
 9 decedent they bring suit on behalf of.

10 Under *Moya*, the heirs and estates of the Puentes are at most entitled to a pro rata share of
 11 the \$50,000 per-person policy limit for Damaso and Christa.²⁹ If Damaso Puente had survived
 12 the accident, the maximum he could recover under the policy’s per-occurrence limit would be
 13 \$50,000; the same is true for Christa.³⁰ Because their heirs and estates would not have claims
 14 but for the Puentes’ deaths, under *Moya*, the representatives’ claims are derivative of the
 15 Puentes’ claims. So, at most, Damaso S. Puente and the estate of his son Damaso I. Puente can
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17²⁵ *Moya*, 837 P.2d at 429 (citing 1 A. Widiss, *Uninsured and Underinsured Motorists Insurance*
 18 § 12.4 (1985); *Izzo v. Colonial Penn Ins. Co.*, 524 A.2d 641, 645 (Conn. 1987)).

26 *Id.* at 430.

27 *Id.* (emphasis in original).

28 *Id.* at 429 (citation omitted).

29 This analysis assumes, without deciding, that the policy provides coverage for the Puente-heirs’ claims. Nothing in this order should be construed as a determination of GEICO’s coverage or defense obligations.

30 See ECF No. 28 at 35 (copy of Aparicio’s insurance policy) (“The limit of bodily injury liability stated in the declarations as applicable to ‘each person’ is the limit of our liability for all damages, including damages for care and loss of services, because of bodily injury sustained by one person as the result of one occurrence.”) (emphasis omitted).

1 collectively recover \$50,000 from the GEICO policy; and Maria Puente, Daniel Malone, Diane
2 Malone, and Christa's estate can collectively recover no more than \$50,000 from the GEICO
3 policy. The value of each of GEICO's claims against these potential claimants is thus less than
4 \$50,000 and cannot meet the \$75,000 amount in controversy required for federal jurisdiction.
5 This court thus lacks jurisdiction over this action.

6 Because I find that subject-matter jurisdiction is lacking, I dismiss on this basis. I thus
7 need not and do not reach the defendants' remaining dismissal arguments, and I deny as moot
8 GEICO's motion for summary judgment.

9 **Conclusion**

10 IT IS THEREFORE ORDERED that the defendants' motion to dismiss [ECF No. 26] is
11 **GRANTED for want of subject-matter jurisdiction**; it is denied without prejudice in all other
12 respects. IT IS FURTHER ORDERED that the plaintiff's motion for summary judgment [ECF
13 No. 28] is **DENIED as moot and without prejudice**. The Clerk of Court is directed to CLOSE
14 THIS CASE.

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16 U.S. District Judge Jennifer A. Dorsey
17 December 14, 2021
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